

## REMARKS

Applicant notes that another examiner has been substituted to dispose of the application.

The withdrawal of the prior rejection under 35 USC 112 is noted with appreciation.

Applicant's remarks in the prior responses are incorporated herein by reference.

In response to the Applicant pointing out that as rejected claims 9 and 10 had previously been allowed over Chen, cited in a prior IDS initialled as reviewed by a previous examiner a *res judica* type precedent of patentability over Chen has been established, the examiner merely states:

*"After an updated search, however, it was found that the claims as instantly recited are not in allowable form and therefore the instant claims went through more prosecution and the subsequent action was made."*

It seems apparent from the foregoing that the examiner is unaware, or has ignored, the well established judicial doctrine that to justify a reversal of an examiner's previous decision of patentability in view of the same reference, the evidence required must satisfy the clear and convincing standard, not merely the much lower preponderance of evidence or balance of proof standard normally applicable in civil/administrative proceedings. Notwithstanding, it is applicants position that not even the preponderance of evidence standard has been satisfied in the present instant application..

For example, in arguing that *"the mere fact that the two applications are trying to solve different problems is not reason enough to say that Chen is teaching away from the instant claims"*, the examiner has evidently disregarded the fact of the Chen teaching as a whole being directed to increasing the intensity of the fire for heating

by providing convection enhancing holes over the entire surface of the top (corrugated) plate forming the top wall of the fuel receiving chamber,(as pointed out by applicant in the prior response), thereby intentionally opening the top wall to convective interaction/unrestricted air exchange with the exterior atmosphere represents not merely a different approach, but an **opposite** approach to the claimed invention which requires(claim 9) the "top wall being imperforate except for at least one elongate, rectangular vapor exit aperture extending longitudinally therethrough and being of predetermined, constant size" ... And "said top wall forming noncombustible vapor restrictors as necessary both for the production of the rectangular shaped flame and for the claimed self regulation. Reference is also made to the flat top wall and imperforate vapor restrictor of previously allowed claim 10.

Therefore, the Chen structure dedicated in design to the production of enhanced heating by enhanced convention with holes all over the top wall which is also corrugated for convention effects, clearly **teaches away** from the claimed invention requiring vapor restrictors and self regulation. Thus, once becoming aware of the teaching of the reference as a whole, the technician would be prejudiced against further consideration of adopting the structure disclosed therein.

The examiner's assertions in the passage beginning on the penultimate line of Page 3 , insofar as they can be understood, seem incorrect or off- point.

In disputing that the loose piece cooking basin is not rigidly joined to the walls of the cartridge, the examiner refers to the use of the term rigid in relation to the structure of the lid 17 arguing, inappropriately, that "

*"FIG. 3 shows a cross sectional view of the fuel cartridge 10 and one configuration of a rigid lid 17. The rigid lid 17 shown is a "plug" type or "friction" type lid that seals the vapor exit aperture 16 after the fuel cartridge 10 has been filled with fuel 16A. The rigid lid 17 seals the fuel cartridge 10 by sitting snugly inside the vapor exit aperture 16, and can be removed by a consumer in order to use the fuel cartridge 10. Other types of lids may also be used, such as "easy off" scored metal lids of the type employed on sardine or soda cans.*

*Based on this definition the cooking basin acts as a plug type lid that seals any of the fuel vapors from exiting and ambient air from entering the burning system. Although*

*the cooking basin is removable it is the position of the examiner that when it is on top of the cooking apparatus that the apparatus as a whole is in "one piece," and that one of ordinary skill in the art would envisage a one piece apparatus from the disclosure of Chen."*

The examiner's assertion is incorrect. The passage does not refer to the top wall of the container being rigidly joined to the walls but merely states that the lid itself is rigid and, furthermore, that it can be plugged into the vapor exit aperture.

Notwithstanding, Chen does not teach that the basin 3 could or should form a plug fit with the container 11 - the basin merely sits thereon. The "envisaging" to which the examiner alludes, requires the exercise of imagination and as such represents a non-obvious reconstructive procedure using inadmissible *post facto* analysis, having already seen the solution provided by the claimed invention

In addition, the bowl 3 does not provide a top wall extending across the fuel receiving chamber top or extending parallel to the bottom wall, as required by claim 10 and claim 9, respectively. In fact, as clearly shown in Figure 4, the bowl walls are located entirely outside (even radially spaced apart from), the periphery of the fuel container 11. It would not therefore provide any material vapor restriction in the practical working environment of the invention - in addition to the whole teaching of Chen being directed specifically to the provision of an opposite, accelerated burning effect intentionally enhanced by additional (instead of restricted) fuel vapor access to the ambient air .

Furthermore, the technician would not routinely conceive of the multi-part, loose- piece Chen structures as constituting the claimed cartridge type structure- having an ordinary meaning as a direct container of a charge which holds the charge ready for discharge and, usually, for carrying the contents into another structure - a charge operating/actuating device- for discharge.

Finally, the basin of Chen remains a loose piece item when sitting on the container 11 and the basin and fuel container do not ever form "one-piece" - which ordinarily means constituted by or made as an undivided piece - as consistent with the claimed cartridge structure. Chen's multi-part, loose-piece structures can never be

deemed to constitute a one-piece cartridge structure, as claimed, nor would there be any motivation for the unimaginative technician to so modify Chen teaching, unless he was already aware of the solution provided by the claimed invention - which procedure would amount to inadmissible *post facto* analysis.

Accordingly, the prior allowance of the claims over the reference should be sustained.

Favorable reconsideration of the application is requested.

Respectfully submitted,  
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